Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

MARY JOY ANN GUSTILO and
JOSE VICENTE GUSTILO, III,
PETITIONERS

v.

NADINA (MARAVILLA) GUSTILO, Individually
and as Former Administratrix of
The Estate of Armando C. Gustilo, Deceased,
and as Guardian of June Salvacion (Maravilla)
Gustilo; JOSEPH S. HORRIGAN, as Guardian Ad Litem
and Attorney Ad Litem of June Salvacion Gustilo;
and the KANALY TRUST COMPANY, as Administrator
of the Estate of Armando C. Gustilo, Deceased,
RESPONDENTS

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE FOURTEENTH COURT OF APPEALS (HOUSTON) TEXAS

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APPENDIX A

(Notice from Fourteenth Court of Appeals that
Motion for Stay Pending Petition to Supreme Court
of the United States was GRANTED)

FOURTEENTH COURT OF APPEALS
1307 San Jacinto, 11th Floor
Houston, Texas 77002

June 12, 1997

Re: Case No. 14-93-00941-CV

Style: Gustilo, Mary Joy Ann, a Minor child, by and through her Guardia [sic] v. Gustilo, Nadina G., Et Al

Please be advised that on this date the Court GRANTED petitioner's motion to stay pending petition to the supreme court o the United States for writ of certiorari in the above captioned cause; time extended to and including September 12, 1997.

T. C. Case # 214,659-401 Mary Jane Smart, Clerk

APPENDIX B

(Notice from Texas Supreme Court that
Motion for Rehearing of Writ of Error Overruled)

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711

April 18, 1997

Mr. Raymond M. Hill
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Mr. Joseph S. Horrigan
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Mr. John W. Porter
Baker & Botts
3000 One Shell Plaza
910 Louisiana
Houston, TX 7002-4995

Mr. William S. Hart
Hart & Associates
2650 Fountainview, Suite 416
Houston, Texas 77057

RE: Case Number 96-0843
Style: MARY JOY ANN GUSTILO and JOSE VICENTE GUSTILO, III v. NADINA (MARAVILLA) GUSTILO, individually and as former administratrix of the estate of ARMANDO C. GUSTILO, deceased, et al.

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for rehearing of the application for writ of error, as

amended, in the above styled case. Motion for leave to file appendix and corrections was granted. Petition to publish court of appeals opinion, pursuant to Rule 90(c), Texas Rules of Appellate Procedure, was denied. Motion for assessment of damages for delay was overruled. Motion to strike amended motion for rehearing was overruled.

Sincerely,

John T. Adams, Clerk

by_____
Michael C. Murphey, Deputy

cc: Ms. Mary Jane Smart, Clerk

APPENDIX C
(Notice from Texas Supreme Court that
Application for Writ of Error Denied)

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711

January 31, 1997

Mr. Raymond M. Hill
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RE: Case Number 96-0843
Style: MARY JOY ANN GUSTILO and JOSE VICENTE GUSTILO, III v. NADINA (MARAVILLA) GUSTILO, individually and as former administratrix of the estate of ARMANDO C. GUSTILO, deceased, et al.

Dear Counsel:

Today, the Supreme Court of Texas denied the above referenced application for writ of error, as amended, with the notation "Writ Denied".

Sincerely,
John T. Adams, Clerk

by_____
Michael C. Murphey, Deputy

cc: Ms. Mary Jane Smart, Clerk

APPENDIX D

(Opinion - Fourteenth Court of Appeals)

In The

Fourteenth Court of Appeals

NO. 14-93-00941-CV
JOSE VICENTE GUSTILO, III, AND MARY JOY ANN GUSTILO, A MINOR CHILD, BY AND THROUGH HER GUARDIAN AND NEXT FRIEND, MILAGROS BARCO,
Appellants
V.
NADINA GUSTILO, INDIVIDUALLY AND AS FORMER ADMINISTRATRIX OF THE ESTATE OF ARMANDO C GUSTILO, DECEASED, AND AS GUARDIAN OF JUNE SALVACION GUSTILO; JOSEPH S. HORRIGAN AS GUARDIAN AD LITEM AND ATTORNEY AD LITEM OF JUNE SALVACION GUSTILO; AND THE KANALY TRUST COMPANY AS ADMINISTRATOR OF THE ESTATE OF
ARMANDO C. GUSTILO, DECEASED, Appellees

On Appeal from the Probate Court
Number 1
Harris County, Texas
Trial Court Cause No. 214-659-01

O P I N I O N

This is an appeal from a suit filed in the probate court by Jose Vicente Gustilo, III, and Milagros Barco as guardian and next friend of Mary Joy Anne Gustilo. The probate court entered a take nothing judgment on plaintiffs claims for damages and found that plaintiffs' were not entitled to any further share or interest in the Estate of Armando C. Gustilo (the Estate). We affirm.

FACTUAL AND PROCEDURAL HISTORY

On December 19, 1986, Armando C. Gustilo (Gustilo) died intestate in Houston, Texas. He left substantial assets in the United States and the Philippines. On June 2, 1987, Nadina Gustilo (Nadina) filed an application for administration of the Estate in which she claimed to be Gustilo's surviving spouse. On June 17, 1987, the probate court appointed Nadina administratrix of the Estate, and she continued in that capacity until 1991 when she resigned and the Kanaly Trust Company was appointed successor administrator.

Meanwhile, in the Philippines, Gustilo's son Jose Vicente Gustilo, III (Jose), and Gustilo's daughter Mary Joy Anne Gustilo (Mary), moved for letters of administration and asked that Gustilo's brother be appointed administrator. In August of 1987, Mary, through her mother and guardian, Milagros Barco, entered into a "Compromise Agreement" with Nadina by which Mary waived and renounced her right to inherit from Gustilo. In return, Nadina gave Mary cash and property totalling $600,586.00. In February of 1988, Jose entered into a similar agreement with Nadina and received cash and property worth $717,703.00. These agreements were brought before a Philippine court for approval and were approved on March 1, 1988.

Several months after entering the agreements with Nadina, Jose and Mary filed motions asking the Philippine court to reconsider its order of March 1, 1988, approving the agreements. These motions alleged the compromise agreements were obtained through fraud and mistake due to alleged fraudulent concealment by Nadina. Jose and Mary claimed Nadina had misrepresented the size and value of the Estate in order to get them to settle for less than they were actually due.

In 1991, while the motions for reconsideration were pending, Jose and Mary filed suit in the Texas probate court

where the administration of the Estate was pending. In that suit they asked: (1) the court to declare Jose and Mary as Gustilo's children and sole heirs; (2) the court to declare that Nadina was not Gustilo's surviving spouse and that her daughter June Salvacion Gustilo (June) was not his child or heir, (3) the court to declare the compromise agreements void based on Nadina's fraudulent concealment; (4) for an accounting of the Estate monies because they suspected Nadina had taken and misused Estate funds; (5) that Nadina be required to return Estate assets; and (6) for damages based on fraud, breach of fiduciary duty, trust conversion, and "intentional tort" committed by Nadina. Nadina, individually, as former administratrix, and as June's guardian, answered by general denial and affirmatively pled the defenses of compromise and settlement, release, waiver, estoppel, and quasi-estoppel.

While the case was pending in the probate court in Texas, the Philippine trial court denied the motions for reconsideration filed by Jose and Mary. This order was entered April 6, 1992. Jose and Mary appealed. The appellate court held the Philippine trial court committed a "grave abuse" of discretion when it denied the motions for reconsideration and found the March 1, 1988, and the April 6, 1992, orders were "null and void ab initio" and ordered them set aside. The Philippine trial court was ordered to: (1) continue with the proceedings for appointment of an administrator; (2) determine the relationship of Nadina and June to Gustilo; (3) resolve all other pending matters related to the Estate; and (4) close the administration of the Estate by proper declaration of heirs and distribution.

Nadina filed a motion for reconsideration with the Philippine appellate court. Her motion was denied and she appealed the case to the Philippine supreme court. On January 24, 1994. the supreme court affirmed the decision of the appellate court.

TEXAS PROBATE COURT RULINGS AND JUDGMENT

Before trial, both sides filed partial motions for summary judgment concerning the heirship of Jose, Mary, and June. The trial court granted these motions and entered partial summary judgments declaring that Jose, Mary, and June are the children of Armando Gustilo and **are, therefore, his heirs. Jose and Mary also filed a motion for partial summary judgment concerning Nadina's relationship to Gustilo. They asked the court to find as** a matter of law that Nadina was not Gustilo's surviving spouse, or, alternatively, to make certain findings under Texas Rule of Civil Procedure 166a(e). There is no order in the record granting or denying this motion; however, the trial court did submit the question of whether Nadina was Gustilo's surviving spouse to the jury, therefore, he implicitly denied the motion.

After Jose and Mary rested their case-in-chief, the trial court granted June's motion for an instructed verdict on the cross-action for damages filed by Jose and Mary. The court submitted the remaining issues to the jury. The jury found: (1) Jose and Milagros Barco, as Guardian and next friend of Mary, had released any and all claims to the estate; (3) neither Jose nor Milagros were fraudulently induced to enter settlement agreements with Nadina concerning the estate; (4) Jose and Milagros waived, renounced, and repudiated any claim to the estate; (4) neither Jose nor Milagros were fraudulently induced to waive any claim to the estate; (5) the Compromise Agreements entered into by Jose and Milagros were "fair" contracts; (6) neither Jose nor Milagros were fraudulently induced to enter the Compromise Agreements; (7) both Jose and Milagros were prevented from claiming any further benefits from the Estate based on the doctrine of "quasi-estoppel;" and (8) that Nadina is the surviving spouse of Armando C. Gustilo.

Based on the jury's answers, the partial summary judgments, and the instructed verdict, the probate court

entered judgment that: (1) Jose, Mary, and June are the children and heirs of Armando C. Gustilo; (2) Nadina is the surviving spouse of Armando C. Gustilo and entitled to a spouse's share of the estate; and (3) Jose and Mary are not entitled to any further share or interest in the Estate and should take nothing on their claims for damages. Jose and Mary filed this appeal.

ISSUES RAISED BY APPELLANTS

1. NADINA AS GUSTILO'S SURVIVING SPOUSE

In their first point of error, Jose and Mary, appellants, complain Nadina should not have been found to be Gustilo's surviving spouse. Appellants' two basic contentions are: (1) the trial court erred in refusing to make findings as requested pursuant to rule 166a(e); and (2) the evidence is legally and factually insufficient to support a finding that Nadina was Gustilo's surviving spouse.[1]

First, appellants contend the trial court was required to make certain fact findings as requested under rule 166a(e) of the Texas Rules of Civil Procedure. Appellants asked the probate court to find fifteen allegedly undisputed facts. The majority of these requested fact findings related to Nadina's claim that she was Gustilo's surviving spouse. Rule 166a(e) states:

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[1] Appellants' first point of error contains eight sub-points, including claims that the trial court erred in failing to grant their: (1) motion for directed verdict; (2) motion for judgment; (3) motion for new trial: and (4) motion to set aside the jury's answer to jury question twenty. They also claim the trial court erred in submitting the jury question on the marriage issue over their objection. Because these motions are challenges to the sufficiency of the evidence, we address them accordingly. *See T.O. Stanley Boot Co. v. Bank of El Paso*. 847 S.W.2d 218, 220 (Tex. 1992); *Trihle &: Stephens Co. v. Consolidated Servs., Inc.*, 744 S.W.2d 945, 947 (Tex. App.—San Antonio 1987, writ denied). *See also* W. Wendall Hall, *Revisiting Standards of Review in Civil Appeals*. 24 ST. MARY'S L.J. 1041, 1132 (1993).

If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

TEX. R. Civ. P. 166a(e).

Appellants interpret this rule to mean that a trial court must enter an order containing factual findings that are "without substantial controversy." Essentially, appellants argue rule 166a(e) requires a trial court to make findings of fact in a summary judgment context, much like those that are requested following a nonjury trial. *See* TEX. R. CTV. P. 296. We disagree.

A movant for summary judgment is entitled to an interlocutory order under rule 166a(e) if he demonstrates he is entitled to relief as to some, but not all parties, or as to a part, rather than the whole case. *See Cassidy v. Northwest Tech Ctr. Assoc., Ltd.*, 785 S. W.2d 407, 411 (Tex. App.—Dallas 1990, writ denied); *Texas United Ins. v. Burt Ford Enterp. Inc.*, 703 S.W.2d 828, 832 (Tex. App.—Tyler 1986, no writ). To be entitled to an order under rule 166a(e) the movant most show he is entitled to part of the relief sought. *Id.* Thus, rule 166a(e) is nothing more than a rule allowing for partial summary judgment. It does not require the trial court to make findings on *facts* that are undisputed unless the

cumulative effect of those facts entitle the movant to relief. The facts appellants asked the court to find would not entitle them to a partial summary judgment. Therefore, the probate court did not err in denying appellants' request for findings of fact even if those facts were "without substantial controversy."[2]

Second, appellants contend the evidence was legally and factually insufficient to support the jury's finding that Nadina was Gustilo's surviving spouse. When an appellant challenges both the legal and factual sufficiency of the evidence supporting a jury's finding, the appellate court should first review the legal sufficiency challenge. *Glover v. Texas Gen. Indem. Co,* 619 S W.2d 400, 401 (Tex. 1981). Legal sufficiency points assert there is a complete lack of evidence on an issue. *Raw Hide Oil & Gas, Inc. v. Maxus Exploration Co.*, 766 S.W.2d 264, 275 (Text App.—Amarillo 1988, writ denied). These points of error are designated as "no evidence" or "matter of law" points depending upon whether the complaining party had the burden of proof. *Id.* In this case, the jury question initially placed the burden of proof on Nadina to prove a prima facie case because she was the party attempting to prove the existence of the marriage. However, once she presented prima facie evidence, there was a presumption of the validity of the marriage to Gustilo, and the burden shifted to appellants to prove the second marriage was invalid because the first was never annulled or dissolved through divorce. Appellants do not complain that Nadina failed to make her prima facie case; rather, they argue there was evidence presented that conclusively established the continued existence of Nadina's first marriage to Francisco Maravilla, and thus, the invalidity

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[2] Under the sub-points relating to their 166a(e) argument, appellants raise arguments based on the concepts of judicial admission, judicial estoppel, and quasi-admissions; however; because rule 166a(e) is inapplicable. These arguments are irrelevant.

of Nadina's marriage to Gustilo. Therefore, appellants bear the burden of proof and the legal sufficiency point in this case is a "matter of law" point. *See id. See also W.* Wendall Hall, *Revisiting Standards of Review in Civil Appeals*, 24 ST. MARY'S L.J. 1041, 1133 (1993) (stating that if appellant attacks legal sufficiency of adverse finding on issue where he has burden of proof, "matter of law" is proper designation of point of error).

Challenges to the legal sufficiency may only be sustained when the record shows: (1) a complete absence of evidence of a vital fact; (2) the court is barred by rules of law or evidence from giving weight to the only evidence offered to prove a vital fact; (3) the evidence offered to prove a vital fact is no more than a mere scintilla; and (4) the evidence established conclusively the opposite of a vital fact.
Juliette Fowler Homes, Inc. v Welch Assoc. Inc., 793 S.W.2d 660, 666 n.9 (Text 1990). In reviewing "matter of law" points, the appellate court first examines the record for evidence that supports the finding while ignoring all evidence to the contrary. *Sterner v. Marathon Oil Co.*, 767 S.W.2d 686, 690 (Text 1989). If there is no evidence to support the finding, the reviewing court will then examine the entire record to determine if the contrary proposition is established as a matter of law. *Id.* If the contrary proposition is established conclusively by the evidence, the point of error should be sustained. *Meyerland Community Improvement Ass'n v. Temple,* 700 S.W.2d 263, 267 (Tex App.—Houston [1st Dist] 1985, writ refd n.r.e.).

In support of her claim that she was legally married to Gustilo, Nadina introduced her New Jersey marriage license. On that license, Nadina admitted she had been married to Maravilla, but also checked the box on the form designated "annulled". Thus, this document, along with other evidence

presented[3], establishes a prima facie case of Nadina's marriage to Gustilo and is some evidence that Nadina's first marriage was annulled before she married Gustilo in 1982.

The evidence introduced by appellants to show Nadina's first marriage to Maravilla was still valid at the time she married Gustilo consisted essentially of two exhibits: (1) a petition filed by Nadina in the Philippines to correct June's birth certificate; and (2) facts stated by the Philippine court in its decision declaring the compromise agreement null and void

Appellants argue that these documents are judicial admissions by Nadina that conclusively establishes she was still legally married to Maravilla after she attempted to marry Gustilo. In the petition filed by Nadina, she asked to have June's birth certificate changed to reflect that Gustilo, rather than Maravilla, was the child's father. In that petition, Nadina stated "Petitioner is legally married to Francisco J. Maravilla." This petition was filed March 17, 1983, after the marriage to Gustilo took place in New Jersey. Attached to the petition is a document showing Nadina and Maravilla were given an annulment by the Diocese of Bacolod on February 28, 1978.

The second document, the decision by the Philippine court, states that Nadina, in pleadings filed in that court, admitted her marriage to Maravilla was annulled March 12, 1985, almost three years after she allegedly married Gustilo. However, while the court stated that this made Nadina's status as Gustilo's widow questionable, the court never reached that issue because the only question before it was the validity of the compromise agreement. Further, the pleadings to which the court refers, those in which Nadina allegedly admitted the

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[3] Several family witnesses testified of their knowledge of Gustilo's marriage to Nadina in 1982. None of these witnesses gave testimony about the date of the annulment of Nadina's first marriage.

date of the annulment, were not attached and are not part of this record.

For a judicial admission to exist and be conclusive against a party it must be shown: (1) the declaration relied on was made during the course of a judicial proceeding; (2) the statement is contrary to an essential fact embraced in the theory of recovery or defense asserted by the person making it; (3) the statement was deliberate and unequivocal; (4) giving conclusive effect to the declaration will be consistent with public policy; and (5) the testimony is such that it relates to a fact upon which a judgment for the opposing party may be based. *Balaban v. Balaban, 712* S.W.2d 775, 777-78 (Text App.—Houston [1st Dist.] 1986, writ refd n.r.e.). Nadina's statement in the petition to change her daughter's birth certificate does not meet the first element because pleadings in other actions which contain statements inconsistent with a party's present position are not conclusive, but are merely some evidence which the admitter may explain, contradict, or deny. *State v. Brazos River Harbor Navigation Dist., 831* S.W.2d *539, 544-45* (Text App.Corpus Christi 1992, writ denied).

Likewise, the second document does not meet the requirement of a judicial admission. First. there is no showing of a judicial admission by Nadina because the document was a recitation of what the court said was admitted, and the statement was made, if at all, during the course of a different judicial proceeding.

Testimonial declarations, or quasi-admissions, such as those in the documents from the Philippines, are merely some evidence and are not conclusive. *See Mendoza v. Fidelity and Guarantey Ins. Underwriters, Inc.,* 606 S.W.2d 692, 694 (Tex. 1980). The weight to be given such admissions is decided by the trier of fact. *Id.* Only if a "quasi-admission" meets the requirements of a judicial admission will it be binding on the admitter. *Id* Thus, because the statements made

in the Philippine documents do not comport with the requirements of a judicial admission they are merely some evidence, which was contradicted by other evidence, specifically the New Jersey marriage license.

Appellants also ask this court to look at statements made by Nadina in summary judgment responses and summary judgment evidence. We decline to do so because these documents were not introduced into evidence, despite repeated invitations from the trial court. Therefore, they were not part of the evidence submitted to the jury and should not be included in a sufficiency review.

After reviewing the evidence that was actually admitted, both supporting and negating the jury's answer to question twenty, we hold there was both legally and factually sufficient evidence for the jury to have found that Nadina was Gustilo's surviving spouse.[4] Appellants' first point of error, including all sub-parts, is overruled.

2. JUNE AS GUSTILO'S DAUGHTER AND HEIR

Before trial, June filed a motion for partial summary judgment claiming she was Gustilo's daughter and heir as a matter of law. The trial court granted this motion and entered a partial summary judgment that June is Gustilo's heir. Jose and Mary filed a motion to set aside the partial summary judgment in favor of June, and filed a cross-motion for summary judgment asking the court to deny June's claim. In their second point of error, appellants allege the trial court

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[4] In their brief, appellants provide argument on conflicts of law and the appropriate law to be applied in determining whether Nadina was Gustilo's surviving spouse. We have reviewed the law from each jurisdiction potentially involved in this case and find our conclusion that the evidence was sufficient to support the jury's finding is correct under Texas, New Jersey, or Philippine law.

erred in granting June's motion for partial summary judgment and denying their cross-motion for partial summary judgment.

A motion for summary judgment is not entitled to the same deference as a judgment following a trial on the merits. *Montgomery v. Kennedy, 669 S.W.2d 309, 310-11* (Tex. 1984). The Texas Supreme Court has clearly instructed appellate courts on the appropriate standard to be used when reviewing summary judgments:

1. The movant has the burden of showing there is no genuine issue of material fact and that it is therefore entitled to judgment as a matter of law.

2. In determining whether there is a material issue of fact precluding summary judgment, evidence favorable to the non-movant must be taken as true.

3. Every reasonable inference must be indulged in favor of the non-movant, and any doubt resolved in its favor. E.g., *Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546, 548-49 (Text 1985); Karl v. Oaks Minor Emergency Clinic, 826 S.W.2d 791, 794 (Tex. App.—Houston [14th Dist.] 1992, writ denied).

In her second amended motion for summary judgment, June claimed there was no genuine issue as to any material fact with regard to her claim to be Gustilo's child and heir. In support of her claim, June attached several exhibits to her motion for summary judgment: (l) a "Constancia" dated March 20, 1983, and filed with a Filipino trial court in which Gustilo acknowledged his paternity of June; (2) a final order by a Philippine trial court directing the civil registrar to amend June's birth certificate to reflect her correct name, June Salvacion G. Gustilo, and change the name of her father from Francisco J. Maravilla to Armando C. Gustilo; and (3) a sworn copy of June's birth certificate, as corrected, issued on February 12, 1985. June claims these documents prove as a

matter of law, by clear and convincing evidence, that she is the child and heir of Gustilo. As additional summary judgment proof, June included an affidavit and supplemental affidavit by Nadina wherein she swore Gustilo was June's father, and an affidavit by Maravilla wherein he swore he and Nadina were separated and had no sexual contact during the time June could have been conceived. Though all of these documents were submitted as summary judgment proof, we find that the order of the Philippine trial court standing alone was sufficient to establish that June is the child and heir of Gustilo as a matter of law.

Some years after June's birth, Nadina petitioned a Philippine trial court to amend her birth certificate. Originally, Maravilla was listed as June's father on the birth certificate. Nadina sought to change the- birth certificate to reflect that Gustilo was in fact June's father. As a part of her summary judgment evidence, June attached a properly authenticated copy of the Philippine court's final order of January 7, 1985. The order states, in pertinent part:

> **The jurisdiction of the Court having been established** with the publication of the amended petition (Exhs. "G", "G1" to "G3"), and **with the proper notice to** the Office of the Solicitor General, the Local Civil Registrar of Makati, Metro Manila, as well as **respondents Francisco J. Maravilla and Armando C. Gustilo,** this case was heard on December 6, 1984. During the hearing, nobody appeared to oppose the instant petition. **Further, respondents Francisco Maravilla and Armando C. Gustilo have filed their written conformity to this** petition (Exhs. "E", "F" and "D")....
>
> ...[P]etitioner and respondent Francisco Maravilla, Jr. ceased living together since February 1977 continuously up to the present. On June 9. 1978, petitioner delivered a baby girl named June Salvacion....[T]hrough inadvertence and/or excusable mistake, as she vas then under intense

physical discomfort, affixed her signature in the birth certificate of her daughter and unfortunately, she was not able to notice the erroneous entries supplied honestly in utmost good faith by her uncle William R. Veto, not knowing their relationship with the respondent Armando C. Gustilo, who is the father of her daughter June Salvacion.

Petitioner with all honesty and candor recognized the fact that the true and real father of June Salvacion is the respondent Armando Gustilo and not the respondent Francisco Maravilla Jr. which is appearing in the Birth Certificate of said child (Exh. "B"), considering that petitioner have [sic] no carnal relation with any other men from February 1977 and continuously up to the present except with the respondent Armando C. Gustilo....

Respondent Armando C. Gustilo had manifested through Constancia dated March 20,1983, that he is acknowledging June Salvacion as his daughter with petitioner Nadina G. Maravilla and has no objection to this petition (Exh. "D" .... [R]espondent Francisco J. Maravilla, Jr. assisted by his counsel Atty. Reynaldo C. Depasucsat had voluntarily joined petitioner in the original petition dated March 17, 1983 by signifying his written conformity with all the allegations contained therein as evidence by their signatures appearing thereto (Exhs. "E" and "F").

The petitioner clearly and sufficiently established the paternity of her daughter by the evidence of record to warrant and legally justify the necessary corrections of her daughter's certificate of birth[,] the petition is hereby granted.

WHEREFORE, judgment is hereby rendered directing the Local Civil Registrar of Makati, Metro Manila to correct the birth certificate of June Salvacion G. Maravilla to the effect that her full name appearing in Item No. 3 of the certificate of

birth be corrected to read as "June Salvacion G. Gustilo" and that the name of her father appearing thereto in Item No 7 as Francisco J. Maravilla be corrected to read as Armando C. Gustilo.... (emphasis added).

This judgment establishes that June is the daughter of Gustilo. The judgment recites that both Gustilo and Maravilla were given notice of the proceeding, and in fact, concurred in it. The effect of the Philippine judgment was a finding by a court of competent jurisdiction that June was the biological child of Gustilo.

All of the arguments and complaints raised by appellants as to the use and adequacy of the Philippine judgment as summary judgment proof constitute a collateral attack. A collateral attack on a judgment is an effort to avoid its binding force in a proceeding' instituted not for the purpose of correcting, modifying, or vacating it, but in order to: obtain specific relief against which the judgment stands as a bar. Biaza v. Simon, 879 S.W 2d 349, 353 (Tex. App.—Houston [14th Dist] 1994, writ denied). In other words, it is an attempt to impeach a judgment offered as evidence of some right. *Jefferson Sav. & Loan Ass tn v. Adams,* 801 S.W.2d 811, 814 (Text App.—San Antonio 1990, writ denied). **It is an attack** made by, or in, an action or proceeding that has an independent purpose, i.e., a purpose other than impeaching or overturning the judgment. *Id* Here, appellants' suit was brought to obtain a determination of Gustilo's heirs by a Texas court, and to attempt to set aside the settlement agreements made by Nadina and appellants in the Philippines. The instant suit was not a suit to relitigate the paternity finding.

Unless a judgment of a court of general jurisdiction is void, it is not subject to collateral attack in another court of equal jurisdiction. *Browning v. Placke,* 798 S.W.2d 362, 363 (Tex. 1985). A judgment is void when the court lacked: (1) jurisdiction of the parties or property; (2) jurisdiction of the subject matter; (3) jurisdiction to enter the particular

judgment; or (4) the capacity to act as a court. *Bakali v. Bakali,* 830 S.W.2d 251, 254 (Text App.—Dallas 1992, no writ). All errors, other than jurisdictional deficiencies, render a judgment merely voidable, and such errors must be corrected on direct attack. *Id.*

The Philippine judgment recites that it has jurisdiction of the subject matter and appellants do not attack the court's jurisdiction. Instead, they attempt to impeach the judgment and defeat June's motion for summary judgment by filing affidavits that attempt to show Maravilla had access to Nadina around the time of conception. This is nothing more than an improper collateral attack. We hold the Philippine judgment is sufficient summary judgment proof to support the trial court's finding that June was the daughter and heir of Gustilo.[5] Appellants' second point of error is overruled.

3. ARTICLE 352 OF TEXAS PROBATE CODE

In their third point of error, appellants claim the probate court erred by "refusing to carry out statutory mandate provided under Article 352 of the Texas Probate Code." Appellants contend the probate court was required to declare the Compromise Agreements between Nadina and appellants void based on article 352.

Article 352 provides that except under certain specified circumstances "the personal representative of an estate shall not become the purchaser, directly or indirectly, of any property of the estate sold by him, or by any co-representative if one be acting. TEX. PROB. CODE ANN. art. 352 (Vernon Supp. 1995). There is nothing in the record to show that Nadina, as the personal representative, ever attempted to, or

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[5] Because we find the Philippine judgment is sufficient summary judgment proof, we do not need to address each of appellant's fifteen subpoints to point of error two.

in fact purchased, any Estate property. The Compromise Agreements merely attempted to settle the Estate; the agreements did not involve a "purchase." Article 352 is inapplicable and appellants' third point of error is overruled.

4. THE JUDGMENT OF THE PHILIPPINE APPELLATE COURT

In point of error four, appellants claim the probate court erred by refusing to recognize the judgment and opinion of the Seventh Court of Appeals of the Republic of the Philippines. Appellants claim the Philippine decision must be recognized because it is (1) res judicata as to the invalidity of the Compromise Agreements; and (2) the law of the case. After Jose and Mary executed the Compromise Agreements, the agreements were brought before a Philippine trial court for approval and were approved on March 1, 1988. Several months after entering into the agreements with Nadina, Jose and Mary fled motions asking the Philippine court to reconsider its order of March 1, 1988, approving the agreements. These motions alleged the compromise agreements were obtained through fraud and mistake, due to alleged fraudulent concealment by Nadina. Jose and Mary claimed Nadina had misrepresented the size and value of the Estate in order to get them to settle for less than they were actually due.

While the motions for reconsideration were still pending in the Philippine trial court, Jose and Mary filed this suit in the Texas probate court. While the case was pending in the Texas probate court, the Philippine trial court denied appellants' motions for reconsideration. This order was entered April 6, 1992. Appellants then filed a petition for certiorari with the Seventh Division of the Philippine appellate court. In February of 1993, the Philippine appellate court found the Philippine trial court committed a "grave abuse" of discretion when it denied the motions for reconsideration, and found the March 1, 1988, and the April 6, 1992, orders were

"null and void ab initio" and ordered them set aside. The Philippine trial court was ordered to: (l) continue with the proceedings for appointment of an administrator; (2) determine the relationship of Nadina and June to Gustilo; (3) resolve all other pending matters related to the Estate; and (4) close the administration of the Estate by proper declaration of heirs and distribution.

After Nadina became aware of the decision of the Philippine appellate court, she filed a motion for reconsideration. That motion was ultimately denied and the case was appealed to the supreme court of the Philippines. On January 25, 1994, the Philippine supreme court affirmed the decision of the appellate court. The supreme court's decision was issued more than five months after final judgment was rendered in this case.

—The prerequisites for the application of the doctrine of res judicata are: (1) the prior judgment was rendered by a court of competent jurisdiction; (2) there was a final judgment on the merits; (3) the parties, or those in privily with them, are identical in both suits; and (4) the same cause of action is involved in both suits. *Gorelick v. Harrison County,* 720 S.W.2d 835, 836 (Tex App.—Texarkana 1986, no writ). For the doctrine to apply, there must be an existing final judgment by a court of competent jurisdiction. *Turner v. City of Carrollton Civil Serv. Comm'n,* 884 S.W.2d 889, 894 (Tex.App.— Amarillo 1994, no writ).

During the trial of this case, and at the time appellants requested the court notice the foreign judgment and accept it as res judicata, the Philippine judgment was not final. The Philippine judgment did not become final until at least January of 1994 when the supreme court issued its decision. Therefore, the doctrine of res judicata was inapplicable and the trial court did not err in refusing to recognize the Philippine appellate court decision.

Appellants also claim the trial court should have recognized the Philippine appellate decision as law of the case. The doctrine of the law of the case is defined as that principle under which the determination of questions of law will generally be held to govern the case throughout all of its subsequent stages where such a determination *has already been made on a prior appeal to a court of last resort. Kropp v. Prather, 526* S.W.2d 283, 285 (Text Civ. App --Tyler 1975, writ refd n.r.e.) (emphasis added).

Here, at the time appellants were claiming the doctrine applied, a determination regarding the validity of the Compromise Agreements had not been made to a court of last resort Le Philippine supreme court was the court of last resort and its decision did not issue until five months after judgment had been entered in the Texas suit. Thus, the doctrine is inapplicable and the trial court did not err in refusing to apply it. Appellants' fourth point of error is overruled.[6]

In connection with this point of error, appellants filed a motion with this court asking us to "give full recognition" under section 36 of the Texas Civil Practice and Remedies Code to the decisions of the appellate and supreme court of the Philippines, and upon doing so, enforce those

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[6] Appellants' attempted use of the doctrines of res judicata and law of the case is an attempt to have two bites at the same apple. Initially, appellants lost their argument concerning the Compromise Agreements in the Philippine court. While that case was under reconsideration in the Philippines, they filed suit in Houston essentially making the same claim: the Compromise Agreements were void because of the fraudulent actions of Nadina. When they learned their argument had been accepted by the Philippine appellate court. They attempted to use that decision as a bar in the Houston court. Now, unhappy with the outcome of their case in Houston, they want to rely on the Philippine court's decision. Appellants had the option of not filing suit in Houston, or filing for a stay under section 36.007 of the Texas Civil Practice and Remedies Code. They chose neither avenue and cannot now complain because they did not prevail in Texas.

decisions by setting aside all the jury findings relating to the agreements between Nadina and appellants.[7]

Section 36.001 of the Code defines a "foreign country judgment" as a judgment of a foreign country granting or denying a sum of money other than a judgment for: (1) taxes, fines, or other penalties; or (2) support in a matrimonial or family matter. TEX. CIV. PRAC. & REM. CODE ANN. 36.001(2) (demon 1986). The Philippine judgments that appellants want this court to recognize and enforce are not judgments "granting or denying a sum of money." Therefore, they are not "foreign county judgments." We hold section 36 is inapplicable and deny appellants' motion and request.

5. TESTIMONY OF JAY REA

In their fifth point of error, appellants contend the trial court erred in (1) allowing the testimony of Jay Rea (Rea) into evidence, and (2) allowing exhibits prepared by Rea into evidence Appellants essentially contend Rea's testimony was inadmissible because he was not qualified as an expert and his testimony was based on inadmissible hearsay.

Rea was called as an expert witness by June to rebut appellants' evidence that they did not receive a fair share of

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[7] In their motion and notice, appellants also seek recognition of the Philippine decisions under section 3' of the Texas Civil Practice and Remedies Code. However, section 35 is based on the full faith and credit clause of the United States Constitution. *See Stine v. Koga*, 790 S.W.2d 412, 414 (Text App.—Amarillo 1990, writ dism'd by agreement). The full faith and credit clause of the United States Constitution states that full faith and credit shall be given in each state to the judicial proceedings of every other state. U. S. CONST. art. IV, 1 (emphasis added). Thus, section 35 of the Texas Civil Practice and Remedies Code applies to court decisions from other states, not other countries. In fact, the title of section 35 is "Enforcement of Judgments of Other States." TEX. CIV. PRAC. & REM. CODE ANN. 35.001 et seq. (Vernon Supp. 1995).

the Estate. Rea's testimony concerned the after-tax value of the Estate and the amount available for distribution.

A witness is qualified as an expert based on his knowledge, skill, experience, training, or education. TEX. R. CIV. EVID. 702. A party who offers an expert's opinion has the burden to show the witness is qualified; specifically, they must show the proffered expert possesses a higher degree of knowledge than an ordinary person or the trier of fact. *ITT Commercial Finance Corp. v. Riehn*, 796 S.W.2d 248, 250 (Text App.—Dallas 1990, no writ). Whether a witness qualifies as an expert is within the trial court's discretion and will be reversed only for an abuse of that discretion. *Harris County Hosp. Dist. v. Estrada*, 872 S.W.2d 759, 762 (Text App.—Houston [1st Dist.] 1993, writ denied).

Rea, a partner with the international accounting firm of Price-Waterhouse, testified he had been with the firm for twelve years. He stated that for the past six or seven years he directed the "individual financial services group" that does "comprehensive, multi-discipline estate. income, investment planning for high net worth individuals" and is considered to be the firm's expert in the area of high net worth estate and tax issues. He testified he has a number of clients who are U.S. citizens living abroad, and foreign citizens living in the U.S. Rea's curriculum vitae was admitted into evidence. This shows he frequently speaks on tax and financial topics and has presented over 200 financial planning workshops for Price-Waterhouse clients.

On cross-examination, appellants elicited testimony that Rea was not an expert in Philippine taxation; however, Rea responded that certain members of his firm with whom he consulted are experts in this area. He admitted he had not handled a "death tax calculation" case prior to this one, but one of his colleagues with whom he consulted handled death tax calculations for major estates on a daily basis.

The record shows Rea possessed a higher degree of knowledge than the ordinary person. and, therefore, the threshold requirement for the presentation of a supposed expert's opinion was satisfied. *See Riehn, 796* S.W.2d at 250. After the threshold is met, weight and **credibility determinations fall within the province of the jury.** *Id*

Appellants also complain that all of Rea's testimony was based on hearsay, and was therefore inadmissible. We disagree. First, appellants have wholly failed to point this court to the statements or documents they consider hearsay. Second, we have reviewed the record and not all of the testimony relied on by Rea was hearsay. Finally, if the facts or data relied on by the expert are of a type reasonably relied upon by experts in the field in forming opinions on the subject, the facts or data do not have to be admissible in evidence. TEX. R. CTV. EVID. 703. The record shows the data and facts relied upon by Rea, e.g., estate tax forms and accountings filed by the administrators, are clearly the type of data upon which experts in the field would rely in forming opinions on the subject.

We conclude the trial court did not abuse its discretion in admitting either Rea's testimony or the exhibits prepared by Real Appellants' fifth point of error is overruled.

6. CUMULATIVE ERROR

In their sixth point of error, appellants claim the "cumulative effect" of the errors committed by the probate court and the conduct of the trial in general, resulted in an unfair trial and prejudice to appellants. Under this point, appellants have fifteen sub-points which list specific errors allegedly committed by the trial court. The alleged errors range from complaints about discovery and discovery sanctions to error in the jury charge.

While briefing requirements and the rules relating to the presentation of points of error and argument are to be liberally construed, the purpose of briefs is to acquaint the court with the points relied on and provide such argument as will enable the court to decide the case. TEX. R. APP. P. 74(p). This court may disregard an assignment of error which is multifarious. Pooser v. Lovett Square Townhomes, 702 S.W.2d 226 (Text App.—Houston [1st Dist.] 1985, writ refd n.r.e.). This "point of error" does not sufficiently direct the attention of the court to the error about which the complaint is made; nor are these numerous alleged errors supported by sufficient argument *See* TEX. R APP. P. 74(d).

While rule 74(p) states an appellate court may order rebriefing for a flagrant violation of this rule, the court is not required to do so. *Fredonia State Bank v. American Life Ins., 881* S.W.2d 279 284 (Text 1994). In this case, we find appellants' point of error to be multifarious and decline to order rebriefing. Appellants' sixth point of error is overruled.

7. DAMAGE CLAIMS AND THE DIRECTED VERDICT

At the conclusion of appellants' case in chief, June moved for and was granted a directed verdict on appellants' claims for damages arising out of Nadina's alleged fraud in connection with the settlement in the Philippines. In their seventh point of error, appellants allege (1) the trial court erred in allowing appellants' damage claims to be tried because it was appellants' understanding that the damage issues would not be tried and (2) the trial court erred in granting the motion for directed verdict because appellants made a prima facie case for damages based on fraud. Appellants' confusion regarding whether their claim for damages would be tried apparently stems from the fact that another case involving the Gustilo estate was pending before the same probate court at the time the instant case went to trial. The other lawsuit was brought by the Kanaly Trust Company, as successor administrator of the Estate, against Nadina. her bonding company, Mary, and

Jose. The case brought by Kanaly Trust was given cause number 214.659-405 and was referred to on the record as the "405 case." In the "405 case." the issues concerned whether Nadina, in her capacity as administratrix of the Estate, properly accounted for all estate assets, breached her fiduciary duty, or converted estate assets. There were no specific allegations in the "405 case" alleging fraud in connection with the settlement in the Philippines.

The pleadings fled by appellants in this case contained many allegations similar to those made in the "405 case" by Kanaly Trust Specifically, there was a cross-claim against Nadina alleging breach of fiduciary duly and fraud arising out of her actions as administratrix. Thus, the probate court was confronted with a situation where some issues in the instant case overlapped issues raised by Kanaly Trust in the "405 case."

On April 5, 1993, the day before trial began, counsel for appellants asked the court for "some guidance" concerning the cross-action against Nadina "based on the identical issues -- not identically but substantially the same issues of fraud, breach of fiduciary duty [as those raised by Kanaly Trust in the "405 case]." The court responded: "It is my understanding that we are trying whether Nadina is an heir and whether the Settlement Agreement barred your clients." Appellants' counsel told the court it was their position that the settlement agreements were procured by fraud and wondered how that issue was to be handled. The probate court told appellants' counsel that if they were going to use the fraud allegation to defeat the settlement agreements then that would be part of the case.

The next day, before voir dire began, appellants' counsel objected to "trying the issue of fraud if indeed they will be given any issue preclusion of fact when we try the same issue for damages." In response to the objection, the court stated: *"Counsel, what I intend to hear is the fraud that related to the*

settlement in the Philippines. I don't intend to hear any evidence about what has happened in the administration of the estate after it got started." The court clearly ruled tl ~ at all issues relevant to the settlement agreements were to be tried in the instant case and that any issues relating to Nadina's administration of the Estate would be tried in the "405 case." Therefore, prior to the beginning of voir dire, appellants were on notice that any claim of fraud related to the settlement agreements would be tried to the jury.

Appellants also contend the trial court erred in granting the directed verdict because they established a prima facie case for damages. In reviewing the granting of a directed or instructed verdict by the trial court on an evidentiary basis, the reviewing court must determine whether there is any evidence of probative force to raise fact issues on the material questions presented. *Collora v. Navarro,* 574 S.W.2d 65, 68 (Tex 1978). The appellate court considers all of the evidence in the light most favorable to the party against whom the verdict was instructed and disregards all contrary evidence and inferences. *Id.* Every reasonable inference deductible from the evidence must be indulged in favor of the non-movant. *Id.* If there is any conflicting evidence of probative force, the issue is for the jury and an instructed verdict is improper. *Id.* However, when there is no evidence of probative force on an ultimate fact issue, or the probative force of the evidence is so weak that only a mere surmise or suspicion is raised, the trial court has the duty to instruct or direct the verdict. *Porterfield v. Brinegar, 719* S.W.2d 558, 559 (Text 1986).

When June moved for an instructed verdict, her attorney argued appellants had failed to prove the essential elements of fraud. Specifically, June's attorney argued there was no evidence that any misrepresentations were made, that they were relied on by appellants to their detriment, or that damage resulted. In responding to the motion, appellants' counsel conceded on the record that there was no evidence of reliance. A party may not urge on appeal that which was conceded at

trial. *Buck v. Rogers, 709* S.W.2d 283, 287 (Text App—Corpus Christi 1986, no writ). Thus, appellants cannot now claim they presented evidence on the fraud issue when their attorney conceded that they failed to prove an essential element.

Nevertheless, even if we address appellants' contention and review the evidence under the required standard of review, appellants' argument fails. We have reviewed the entire record. and considering the evidence in the light most favorable to appellants, we find the trial court did not err in granting June's motion for instructed verdict. Appellants did not provide evidence on each element of their fraud claim. Appellants' seventh point of error is overruled.

CONCLUSION

We overrule all of appellants' points of error and affirm the judgment of the trial court.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed July 3, 1996. Panel consists of Justices Yates, Fowler. and Oneill.
Do Not Publish - TEX. R. APP. P. 90.

APPENDIX E

(Notice from Fourteenth Court of Appeals
that Motion for Rehearing and Motion for
Rehearing En Banc Denied)

FOURTEENTH COURT OF APPEALS
1307 San Jacinto, 11th Floor
Houston, Texas 77002

August 15, 1996

Re: Case No. 14-93-00941-CV

Style: Gustilo, Mary Joy Ann, a Minor child, by and through her Guardia [sic] v. Gustilo, Nadina G., Et Al

Dear Counsel:

Please be advised that on this date the court overruled the appellants motion for rehearing. Further, application for writ of error, if any, must be submitted on or before Monday, September 16, 1996.

Charlene Mitchell,
Chief Deputy Clerk

August 15, 1996

FOURTEENTH COURT OF APPEALS
1307 San Jacinto, 11th Floor
Houston, Texas 77002

Re: Case No. 14-93-00941-CV

Style: Gustilo, Mary Joy Ann, a Minor child, by and through her Guardia [sic] v. Gustilo, Nadina G., Et Al

Dear Counsel:

Please be advised that on this date the court overruled Mary Joy and Jose Vicente Gustilo's Motion for En Banc Consideration in the above cause.

Charlene Mitchell,
Chief Deputy Clerk

APPENDIX F

[Excepts from: *Arsenal v. Intermediate Appellate Court*, 186 Philippine Supreme Court, Lexus 2709 (July 14, 1986)]

FRANCISCA ARSENAL and REMEDIO ARSENAL, petitioners, vs. THE INTERMEDIATE APPELLATE COURT, HEIRS OF TORCUATO SURALTA, and SPOUSES FILOMENO PALAOS and MAHINA LAGWAS, respondents

GUTIERREZ, JR., J.:

. . .

[Text Omitted]

On March 6, 1974, Torcuato Suralta filed a case against Filomeno Palaos, Mahina Lagwas, Francisca Arsenal, Remedio Arsenal and the Register of Deeds of Bukidnon for the annulment of Transfer Certificate of Title No. T-7879 issued to the Arsenals insofar as it covers the four-hectare portion previously sold to him.

In answer to the complaint, the Arsenals denied previous knowledge of the sale to Suralta of the land in question. As a special defense, they assailed the validity of the purchase by Suralta in 1957, pointing to the prohibition contained [*6] in the Public Land Law against its disposal within the period of five years form the issuance of the homestead patent. They also questioned the legality of the sale made to Suralta in 1957 by Filomeno Palaos and Mahina Lagwas for not having been approved by the Commission on National Integration despite the fact that Palaos and his wife belong to the cultural minorities,1 are illiterates, and do not understand the English language in which the deed of sale in favor of Suralta was written.

In their answer, the spouses Filomeno Palaos and Mahina Lagwas sustained the sale made by them to Suralta. They

alleged that they verbally sold one hectare to one Tiburcio Tadena and sold the remaining 3.7829 hectares to the Arsenals. They stated that they informed the Arsenals about the previous sale of four hectares to Suralta. They also claimed that the Arsenals took undue advantage of their ignorance and illiteracy and caused them to sign the document of sale to as to include the entire 87,829 sq. m. covered by their original title.

On May 4, 1976, the trial court rendered judgment in favor of Suralta. It imputed bad faith to the Arsenals and declared them disqualified to avail of the protection [*7] afforded by the provisions of the Civil Code to innocent purchasers although they registered their purchase ahead of Suralta.

The court held that:

xxx xxx xxx [sic]

"The defendants Arsenal could not also avail of the prohibition in the Public Land Act against the disposal of any land granted to a citizen under that law because the benefit of said prohibition does not inure to any third party. Only the government could have filed the adequate proceedings for confiscation of the land for violation of the condition of the grant by Palaos. Moreover, a verbal sale of land is valid and effective as between the parties to the agreement and Filomeno Palaos had reaffirmed the sale he made in favor of the plaintiff in 1957 by executing another instrument in 1973 to cure whatever defects which may have affected their formal contract.

"Likewise, Francisca Arsenal cannot take advantage of the lack of approval by the commission on National Integration of the sale made by Filomeno Palaos in favor of plaintiff Torcuato Suralta. Only the latter, in whose favor the protection is afforded, could contest the document on the

ground, as Francisca Arsenal was not a party to said contract and even if she is [*8][also a member of the cultural minority for being only half a native of Bukidnon because she and her husband who is from Cebu are both literates."

. . .

[Text Omitted]

In resisting respondent Suralta's claim, the petitioners rely heavily on the nullity of the contract of sale executed in 1957 between the respondents Palaos and Suralta. They allege that because the previous sale was void from the beginning, it cannot be ratified and "No amount of bad faith on the part of the petitioners could [*10] make it valid and enforceable in the courts of law."

These arguments are impressed with permit.

The law on the matter which is the Public Land Act (Commonwealth Act No. 141, as amended) provides:

"Sec. 118. Except in favor, of the Government or any of its branches, units or institutions, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of vive years form and after the date of issuance of the patent or grant nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

"No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Natural Resources, which approval shall not be denied except on constitutional and legal ground (As amended by Cocm. Act. No. 456, approved June 8, 1939).

xxx xxx xxx [sic]

"Sec. 120. Conveyance and encumbrance made [*11] by persons belonging to the so-called 'non-Christian Filipinos' or national cultural minorities, when proper, shall be valid if the person making the conveyance or encumbrance is able to read and can understand the language in which the instrument or conveyance or encumbrance is written. Conveyances and encumbrances made by illiterate non-Christians or literate non-Christians where the instrument of conveyance is in a language not understood by the said literate non-Christian shall not be valid unless duly approved by the Chairman of the Commission on National Integration. (As amended by Rep. Act No. 3872, approved June 18, 1964).

xxx xxx xxx [sic]

"Sec. 124. Any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of sections one hundred and eighteen, one hundred and twenty, one hundred and twenty-one, one hundred and twenty-two, and one hundred twenty-three of this Act shall be unlawful and null and void from its execution and shall produce the effect of annulling and cancelling the grant, title, patent, or permit originally issued, recognized or confirmed, actually or presumptively, and cause the [*12] reversion of the property and its improvements to the State."

The above provisions of law are clear and explicit. A contract which purports of alienate, transfer, convey or encumber any homestead within the prohibitory period of five years form the date of the issuance of the patent is void from its execution. In a number of cases, this Court has held that such provision is mandatory (*De los Santos v. Roman Catholic Church of Midsayap*, 94 Phil. 405).

Under the provisions of the Civil Code, a void contract is inexistent from the beginning. It cannot be ratified neither can

the right to set up the defense of its illegality be waived. (Art. 1409, Civil Code).

To further distinguish this contract from the other kinds of contract, a commentator has stated that:

"The right to set up the nullity of a void or non-existent contract is not limited to the parties as in the case of annullable or voidable contracts, it is extended to third persons who are directed affected by the contract." (Tolentino, Civil Code of the Philippines, Vol. IV, p.6054, [1973]).

"Any person may invoke the inexistence of the contract whenever juridical effects founded thereon are asserted [*13] against him." (Id. p. 595).

. . .

[Text Omitted]

". . . . This execution of the formal deed after the expiration of the prohibitory period did not and could not legalize a contract that was void from its inception. Nor was this formal deed of sale 'a totally distinct transaction from the promissory note and the deed of mortgage', as found by the Court of appeals, for it was executed only in compliance and fulfillment of the vendor's previous promises, under the perfected sale of January 4, 1938, to execute in favor of his vendee the formal act of conveyance after the lapse of the period of inhibition of five years from the date of the homestead patent. What is more, the execution of the formal deed of conveyance was postponed by the parties precisely to circumvent the legal prohibition of their sale.

. . .

[Text Omitted]

At first blush, the equities of the case seem to lean in favor of the respondent Suralta who, since 1957, has been in

possession of the land which was almost acquired in an underhanded manner by the petitioners. We cannot, however, gloss over the fact that the respondent Suralta was himself guilty of transgressing the law by entering, in 1957, into a transaction clearly prohibited [*20] by law. It is a long standing principle that equity follows the law. Courts exercising equity jurisdiction are bound by rules of law and have no arbitrary discretion to disregard them. Equitable reasons will not control against any well-settled rule of law or public policy (*McCurdy v. County of Shiawassee*, 118 N.W. 625). thus, equity cannot give validity to a void contract. It, on the basis of equity, we uphold the respondent Suralta's claim over the land which is anchored on the contracts previously executed we would in effect be giving life to a void contract.

. . .

[Text Omitted]

We see, however, a distinguishing factor in this case that sets it apart from the above cases. The original owners in this case, the respondent Palaos and his wife, have never disaffirmed the contracts executed between them and the respondent Suralta. More than that, they expressly sustained the title of the latter in court and failed to show any interest in recovering the land. Nonetheless, we apply our earlier rulings because we believe that as in pari delicto may not be invoked to defeat the policy of the State neither may the doctrine of estoppel give a validating effect to a void contract. Indeed, it is generally considered that a _____ between parties to a contract, validity cannot be given to it by estoppel if it is prohibited by law or is against public policy (19 Am. Jr. 802). It is not within the competence of any citizen to barter away what public policy by law seeks to preserve (*Gonzalo Puyat & Sons, Inc. v. De los Amas and Alino*, *supra*). Of course, this pronouncement covers only the previous transactions between the respondents. [*23] We cannot pass upon any new contract, between the same parties

involving the same land if this is their clear intention. Any new transaction, however, would be subject to whatever steps the Government may take for the reversion of the property to it.

With the resolution of the principal issues and in view of our own conclusions of facts and law, we hold untenable the lower court's award of moral damages, attorney's fees and litigation expenses.

WHEREFORE, the decision of the Intermediate Appellate Court is REVERSED and SET ASIDE. Judgment is hereby rendered:

(a) Declaring null and void the sale of the four-hectare portion of the homestead to respondent Torcuato Suralta and his heirs;

(b) Declaring null and void the sale of the same portion of land to the petitioners Francisca Arsenal and Remedio Arsenal;

(c) Ordering the Register of Deeds of Bukidnon to cancel Transfer Certificate of Title No. T-7879 as to the disputed four-hectare portion and to reissue an Original Certificate of Title for the portion designated as Lot 81-A of the Subdivision Plan LRC-PLD-198451 prepared by Geodetic Engineer Donito P. Balbuena and approved by the Commission on Land Registration, in favor [*24] of the respondents Filomeno Palaos and Mahina Lagwas;

(d) Ordering the respondents Filomeno Palaos and Mahina Lagwas to reimburse the heirs of the respondent Torcuato Suralta the sum of EIGHT HUNDRED NINETY PESOS (P890.00), the price of the sale. The value of any improvements made on the land the interests on the purchase price are compensated by the fruits the respondent Suralta and his heirs received from their long possession of the homestead.

This judgment is without prejudice to any appropriate action the Government may take against the respondents Filomeno Palaos and Mahina Lagwas pursuant to Section 124 of Commonwealth Act No. 141, as amended.

SO ORDERED.

Feria (Chairman), Fernan, Alampay and Paras, JJ., concur.

APPENDIX G

[Note - Duplicate of Exhibit "B"]

(Notice from Texas Supreme Court that
Motion for Rehearing of Writ of Error Overruled)

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711

April 18, 1997

Mr. Raymond M. Hill
Raymond M. Hill & Associates
2650 Fountainview, Suite 416
Houston, TX 77057

Mr. Joseph S. Horrigan
Horrigan & Goehrs
1000 Two Houston Center
909 Fannin
Houston, TX 77010-1003

Mr. Kelly D. Stephens
Kelly D. Stephens & Associatse
8955 Katy Freeway, Suite 202
Houston, TX 77024

Mr. John W. Porter
Baker & Botts
3000 One Shell Plaza
910 Louisiana
Houston, TX 7002-4995

Mr. William S. Hart
Hart & Associates
2650 Fountainview, Suite 416
Houston, Texas 77057

RE: Case Number 96-0843
Style: MARY JOY ANN GUSTILO and JOSE VICENTE GUSTILO, III v. NADINA (MARAVILLA) GUSTILO, individually and as former administratrix of the estate of ARMANDO C. GUSTILO, deceased, et al.

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for rehearing of the application for writ of error, as amended, in the above styled case. Motion for leave to file appendix and corrections was granted. Petition to publish court of appeals opinion, pursuant to Rule90(c), Texas Rules of Appellate Procedure, was denied. Motion for assessment of damages for delay was overruled. Motion to strike amended motion for rehearing was overruled.

Sincerely,

John T. Adams, Clerk

by_____
Michael C. Murphey, Deputy

cc: Ms. Mary Jane Smart, Clerk

APPENDIX H

(Excerpts from The International Covenant
on Civil and Political Rights)

II. The Senate's advice and consent is subject to the following understandings, which shall apply to the obligations of the United States under this Covenant:

. . .

[Text Omitted]

(5) That the United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant.

III. The Senate's advice and consent is subject to the following declarations:

(1) That the United States declares that the provisions of Articles 1 through 27 are not self-executing.

APPENDIX I

(Excerpts from opinion of Philippine Court of Appeals, *Gustilo v. Agdamag*, G.R. Sp. No. 28626)

Republic of the Philippines
COURT OF APPEALS
Manila

SEVENTH DIVISION

JOSE VICENTE GUSTILO III, Petitioner, - versus - HON. FERNANDO P. AGDAMAG, Presiding Judge, Branch 138, Regional Trial Court, National Capital Judicial Region, Makati, Metro Manila, NADINA G. GUSTILO, and JUNE SALVACION GUSTILO, represented by her mother and judicial Guardian NADINA G. GUSTILO, Respondents.	CA-G.R. SP. NO. 28626 Members: DE PANO, JR. LAPEMA, JR. AUSTRIA-MARTINEZ

--

DECISION

AUSTRIA-MARTINEZ, M.A., J.:

Petition for certiorari filed by Jose Vicente Gustilo III against the Presiding Judge of Branch 138, Regional Trial

Court of Makati, Nadina Gustilo and minor June Salvacion Gustilo, represented by her mother and judicial guardian Nadina Gustilo, praying that judgment be rendered (1) annulling and setting aside the Order dated March 1, 1988 approving the compromise agreement entered into by and between herein petitioner and private respondents; and the Order dated April 6, 192 denying petitioner's motion for reconsideration: (2) revoking and/or setting aside the appointment of private respondent Nadina as judicial administratrix of the Intestate Estate of the deceased Armando C. Gustilo; and (3) ordering respondent court to continue with the proceedings for the appointment of a judicial administrator and all pending incidents and thereafter to close the administration of the estate of the deceased by the proper declaration of heirs and distribution of the shares of each heir.

Private respondents filed their comment; petition his reply; and the former, their rejoinder.

Stripped of non-essentials, the antecedent facts of the case are as follows: On February 5, 19878, minor Mary Joy Anne Gustilo through her mother Milagros M. Barco filed a petition for letters of Administration re: Intestate Estate of Armando C. Gustilo. praying that the deceased's brother Vicente C. Gustilo, Jr. be appointed as administrator of the estate (Annex C, Petition). On February 17, 1987, herein petitioner, as the son of said decedent joined his sister Mary Joy Anne in her petition to appoint their uncle Vicente to be appointed as administrator of the estate of their deceased father (Annex D, Id.). Claiming to be the surviving spouse and daughter of the deceased, Nadina G. Gustilo and June Salvacion G. Gustilo opposed the said petition (Annex H, id.)

On August 13, 1987, Mary Joy Anne through her mother and guardian ad litem Milagros Barco and herein private respondents Nadina and June Salvacion filed a Joint Petition for Appointment of Nadina as Administratrix and for approval of the compromise agreement by and between them as well as

the waiver and renunciation of Mary Joy Anne's right to inherit from the deceased Armando C. Gustilo in favor of her co-heirs Nadina and June Salvacion (Annex I, id.)

On August 13, 1987, herein petitioner filed an opposition thereto questioning the alleged marriage of Nadina to his deceased father and the filiation of June Salvacion whose birth certificate shows that she is the daughter of Nadina and a certain Francisco Maravilla, Jr., and, praying that he be appointed as the administrator of the estate of his deceased father, he being the oldest legitimate heir (Annex J, id.)

On February 24, 1988, petitioner and herein private respondents assisted by counsel, entered into a compromise agreement covering the properties petitioner would have received form the estate of the decedent (par. 11, Petition).

On March 1, 1988, respondent court approved both compromise agreements (Annex A, id.)

On May 28, 1988, Mary Joy Anne through her mother filed a motion for reconsideration of the said Order of March 1, 1988. (marked as Annex M, p. 132, Rollo) which motion was amended on April 4, 1988 (marked as Annex D, id., p. 152). On July 18, 988, petitioner filed a Supplement to Motion for Reconsideration (marked as Annex S, id., p. 179). Both motions for reconsideration allege that the compromise agreements are contrary to law and public policy and, that the consent of both Mary Joy Anne and herein petitioner were obtained through fraud and mistake due to alleged fraudulent concealment by private respondent nadina of the other valuable properties of the deceased Armando Gustilo.

Private respondents opposed said motions.

On April 6, 1992, respondent court denied the motions for reconsideration on the principal ground that the court [??] a quo has no jurisdiction to set aside its Order dated March 1,

1988 (Annex B, id.) which had already become final and executory.

Hence, the present petition for certiorari, petitioner claiming that respondent Judge acted in excess of jurisdiction with grave abuse of discretion in issuing the assailed orders (Annexes A and B) on the following grounds:

. . .

[Text Omitted]

Did the respondent court commit grave abuse of discretion in excess of jurisdiction when it approved the compromise agreement, subject matter of herein petition for certiorari? The answer is in the affirmative.

Under Article 2035 of the new Civil Code, to wit:

> "ART. 2035. No compromise upon the following questions shall be valid:
>
> "(1) The civil status of persons;
>
> "(2) The validity of a marriage or a legal separation;
>
> "(3) Any ground for legal separation;
>
> "(4) Future support;
>
> "(5) The jurisdiction of courts;
>
> "(6) Future legitime."

The civil status of minor June Salvacion and the validity/invalidity or existence of the marriage between Nadina and the deceased cannot be compromised. As can be gathered from the pleadings filed in the present petition for certiorari,

the marriage of private complainant Nadina with the deceased Armando C. Gustilo has been put in issue before the compromise agreement was entered into; that the filiation of private respondent June Salvacion was seriously raised considering that her birth certificate evidently shows that she is the daughter of private respondent Nadina and one Francisco Maravilla, Jr., June Salvacion having been born on June 7, 1978 (Annex 2, p. 275 Records) or almost seven (7) years before her mother's marriage to Maravilla was allegedly annulled. Private respondent claims that her marriage to Maravilla was annulled on March 12, 1985 and that she married the now deceased Armando C. Gustilo in August, 1982, or almost three years before her marriage to Maravilla was supposed to have been annulled; in which case, her status and that of June Salvacion with respect to the deceased Gustilo are highly questionable. These are issues that cannot be the subject of a compromise under the Civil Code. The compromise entered into by and between private respondents and Mary Joy Anne on the one hand, and, the compromise entered into by and between private respondents and petitioner on the other hand, were both in consideration of the valuable property or cash received by them. The law prohibits a compromise on civil status where the recognition of the status is in consideration of some price, prestation or concession by the other party (Tolentino, Civil Code of the Philippines Vol. V, 1992, pl. 490) which is what actually happened in this case. Likewise, in case of compromise on the validity of a marriage which gives rise to absolute nullity such as bigamy, the compromise is void (Tolentino, id. pp. 490-491).

. . .

[Text Omitted]

Generally, a petition for certiorari will not lie where there is an appeal or other adequate remedy in the ordinary course of law available to the petitioner; that a compromise agreement is immediately final and executory. However, the compromise agreement being null and void ab initio, it could

never become final and executory. There is no laches or even finality of the order to speak of (Wong v. Intermediate Appellate Court, 200 SCRA 792).

It was therefore grave abuse of discretion on the part of respondent ;judge to deny petitioner;'s motion for reconsideration on the ground that the compromise agreements have already become final and executory.

We find the prayer of the petition for revocation of the letters of administration issued to private respondent Nadina by virtue of the aforesaid compromise agreement entered into between private respondents and petitioner to be meritorious. The approval of the compromise agreements being null and void ab initio, necessarily the issuance of letters of administration in favor of private respondent Nadina is likewise null and void. The granting of the letters of administration in favor of private respondent Nadina was merely based on the misguided recommendations of petitioner and Mary Joy Anne in the compromise agreements signed by them. The respondent court did not receive evidence as to the suitableness of Nadina to act as administrator. Where an appellant asks for letters of administration on the theory that she is preferred because of her relationship to the deceased, the court necessarily has to pass first on the truth of her claim or relationship to be able to appoint an administrator in accordance with the order of preference (Martin, Rules of Court in the Philippines with Notes and Comments, Vol. 3, Third Edition, 1981 edition p. 542).

WHEREFORE, the Orders dated March 1, 1988 and April 6, 1992 issued by respondent court in Sp. Proc. No. H-1312 being null and void ab initio are hereby SET ASIDE in its entirety. As prayed for, respondent court is ordered to continue with the proceedings for appointment of a judicial administrator; to determine the relationship of private respondents Nadina G. Gustilo and June Salvacion Gustilo to the deceased Armando C. Gustilo after proper hearing, and

resolve all other pending incidents including claims of creditors, and payments of just debts, if there be any; and thereafter to close the administration of the Estate by the proper declaration of heirs and distribution o the respective shares of each heir, in accordance with Section 1, Rule 90 of the Revised Rules of Court.

SO ORDERED.

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

WE CONCUR:

NATHANIEL P. DE PANO, JR. NICOLOS P. LAPEMA, JR.

APPENDIX J

Republic of the Philippines
Supreme Court
Manila
Third Division

Gentlemen:

Quoted hereunder, for your information, is a resolution of the Third Division of this Court dated JAN 26 1994, G.R. No. 111237 (Nadina G. Gustilo, etc., et al. vs. Court of Appeals, et al.). The motion for leave to file rejoinder to petitioners' reply to private respondent to comment on the petition for review on certiorari, dated December 15, 1993, filed by counsel for private respondent is *DENIED*.

Acting on the petition for review on certiorari, as well as the comment of counsel for private respondents thereon and the reply of counsel for petitioners to said comment, the Court finds that no reversible error was committed by the appellate court, and accordingly, Resolves to *DENY* the petition.

Very truly yours,

JULIETA V. CARREON
Clerk of Court

ALFREDO P. MARASEGAN, JR.
Asst. Div. Clerk of Court

APPENDIX K

(Article 263, Civil Code of the Philippines)

Art. 263. The action to impugn the legitimacy of the child shall be brought within one year form the recording of the birth in the Civil Register, if the husband should be in the same place, or in a proper case, any of his heirs.

If he or his heirs are absent, the period shall be eighteen months if they should reside in the Philippines; and two years if abroad. If the birth of the child has been concealed, the term shall be counted from the discovery of the fraud.

APPENDIX L

(Articles 170 and 171, Family Code of the Philippines)

Art. 170. The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband, or in a proper case, any of his heirs should reside in the city or municipality where the birth took place or was recorded.

If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if aborad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier.

Art. 171. The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:

1) If the husband should die before the expiration of the period fixed for bringing his action;

2) If he should die after the filing of the complaint without having desisted therefrom; or

3) If the child was born after the death of the husband.

APPENDIX M

(Articles 255 and 256, Civil Code of the Philippines)

Art. 255. Children born after one hundred and eighty days following the celebration of the marriage, and before three hundred days following its dissolution or the separation of the spouses shall be presumed to be legitimate.

Against this presumption no evidence shall be admitted other than that of the physical impossibility of the husband's having access to his wife within the first one hundred and twenty days of the three hundred which preceded the birth of the child.

This physical impossibility may be caused:

(1) By the impotence of the husband;
(2) By the fact that the husband and wife were living separately, in such a way that access was not possible;
(3) By the serious illness of the husband.

Art. 256. The child shall be presumed legitimate, although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

APPENDIX N

[Excepts from: *Ty Kong v. Republic of the Philippines*, 94 Philippine Reports 321 (1954)]

In the matter of the petition of Atty. Ty Kong Tin to correct the mistake as appearing in the Civil Register of the City of Manila. Ty Kong Tin, petitioner and appellee, vs. Republic of the Philippines, oppositor and appellant.

. . .

[Text Omitted]

GAUTISTA ANGELO, J.:

This is a petition filed by Ty Kong Tin to correct certain mistakes which had allegedly been committed in the civil register of the Civil Registrar of the City of Manila concerning his citizenship.

On May 9, 1951, Petitioner filed in the Court of First Instance of Manila a petition alleging that he is a Filipino citizen duly licensed to practice law in the Philippines; that all his children were born in the City of Manila whose births were duly reported to the civil registrar by the midwife or doctor who had attended their births but in submitting the report it was made to appear therein that the citizenship of petitioner was "Chinese" instead of "Filipino"; that the aforesaid mistakes were committed by the midwife or doctor without any knowledge or consent o petitioner who became aware thereof only when he asked for a certified copy of the birth certificates of his children; and, therefore, he prays that an order be issued directing the civil registrar to correct the pertinent portion of the civil register by making it appear therein that petitioner as well as his children are Filipino citizens and not Chinese citizens, as authorized by article 412 of the new Civil Code.

The Civil Registrar of Manila, in his answer, states that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the petition but he has no objection to making the required correction provided he is so ordered by the court.

the court set the petition for hearing not after ordering petitioner to serve a copy thereof on the Solicitor General for whatever action he may deem proper to take in the premises. After the hearing was held, the Solicitor General submitted a written opposition wherein he asks that the petition be denied on the ground that petitioner has failed to present satisfactory and convincing evidence in support of his claim that he is a Filipino citizen.

Issues having been joined, the court rendered decision overruling the opposition of the Solicitor General and holding that the evidence presented by petitioner sufficiently establishes the claim that he and his children are Filipino citizens, and, consequently, it ordered the Civil Registrar of Manila to make the necessary correction in his register as prayed for in the petition. From his decision the Solicitor General has appealed.

when the case came up for discussion before the members of this Court, the issue that became the center of controversy revolved around the interpretation of the provisions of article 412 of the new Civil Code under which the petition under consideration was filed. This article provides that "No entry in a civil register shall be changed or corrected, without a judicial order." The bone of contention was the extent or scope of the matters that may be changed or corrected as contemplated in said legal provision. After a mature deliberation, the opinion was reached that what was contemplated therein are mere corrections of mistakes that are clerical in nature and not those which may affect the civil status or the nationality or citizenship of the persons involved. If the purpose of the petition is merely to correct a clerical

error then the court may issue an order in order that the error or mistake may be corrected. If it refers to a substantial change, which affects the status or citizenship of a party, the matter should be threshed out in a proper action depending upon the nature of the issue involved. Such action can be found at random in our substantive and remedial laws the implementation of which will naturally depend upon the factors and circumstances that might arise affecting the interested parties. This opinion is predicated upon the theory that the procedure contemplated in article 412 is summary in nature which cannot cover cases involving controversial issues.

It is our opinion that the petition under consideration does not merely call for a correction of a clerical error. It involves a matter which concerns the citizenship not only of petitioner but of his children. It is therefore an important controversial matter which can and should only be threshed out in an appropriate action.

. . .

[Text Omitted]

Wherefore, the decision appealed from is reversed. The petition is dismissed without pronouncement as to costs.

APPENDIX O

[Excepts from: *Republic v. Bartolome*,
Vol. 138 Supreme Court Reports Ann., 442 (1985)]

REPUBLIC OF THE PHILIPPINES, petitioner, vs.
THE HONORABLE FERNANDO BARTOLOME,
Presiding Judge, Court of First Instance
of Pampanga, DOMINADOR P. DIZON and the
CIVIL REGISTRAR of Arayat, Pampanga, respondents.

No. L-38109

Philippine Supreme Court, SECOND DIVISION

1985 Philippine S. Ct. LEXIS 3537

September 6, 1985

MAKASIAR, J.:

In this petition for review on certiorari, the State seeks to annul the order dated November 2, 1973, of respondent Honorable Fernando M. Bartolome, Presiding Judge of the then Court of First Instance of Pampanga, in Special Proceedings Case No. 2350, granting the petition of respondent Dominador P. Dizon for correction and/or cancellation of entries in the Civil Registry, and the order dated December 11, 1973, denying the Sate's motion for reconsideration.

The dispositive portion of the questioned order dated November 2, 1973 of the respondent Judge reads:

"WHEREFORE, in the light of the foregoing, the Court hereby grants the instant petition and orders the Local Civil Registrar of Arayat, Pampanga, to make the necessary correction of the entries in the record of birth of herein

petition from the name 'Domingo Patawaran' to 'Dominador P. Dizon' and opposite the words 'Name of Father' from 'Unknown' to "Policarpio Dizon'" (p. 24, rec.).

On September 7, 1973, respondent Dominador P. [*2] Dizon filed a petition for correction and/or cancellation of entries in the Civil Registry (pursuant to Rule 108, Rules of Court, in relation to Article 412, Civil Code) before the then Court of First Instance of Pampanga, docketed as Special Proceedings Case No. 2350.

In his petition, respondent Dominador P. Dizon alleged, among others, that he is a Filipino, of legal age, widower, with residence and postal address at 717 I. Tolentino, Grace Park, Caloocan City; that he was born on September 15, 1908 in Arayat, Pampanga, of the late spouses Policarpio Dizon of Bacolor, Pampanga and Anselma Patawaran, of Arayat, Pampanga; that on July 22, 1962, when he secured his certificate of birth from the local civil registrar of Arayat, Pampanga, he discovered that his name appears therein as "Domiingo Patawaran" and after the column "Name of Father" is typewritten the word "Unknown," which both entries are incorrect; that his real name is Dominador P. Dizon by which he is known since childhood up to the present; that on September 16, 1939 he was baptized at the Parish Church of Espiritu Santo in Manila, with the name Dominador P. Dizon and his father's name, Policarpio Dizon; and that in view [*3] of the said inaccurate entries in his record of birth, he will suffer inconvenience in securing passport and visas in going aboradl. He prayed that respondent Judge authorize the local civil registrar of Arayat, Pampanga, to change his name in his record of birth from "Domingo Patawaran" to "Dominador P. Dizon'" and to delete the word "Unknown" after the column "Name of Father," and in lieu thereof, place "Policarpio Dizon'" (p. 18, rec.).

Finding the petition to be sufficient in form and substance, the court a quo issued an order setting the same for hearing on

October 4, 1973 and caused the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province of Pampanga (p. 25, rec.).

The hearing set on October 4 was postponed to October 27, 1973 and when the same was called on that day, nobody interposed an objection to the granting of the petition. Consequently, respondent Judge appointed Atty. Pedro Lagman as special counsel to represent the Office of the Local Civil Registrar of Arayat, Pampanga, whose only objection to the petition was that if the petition will be considered as one for a change of name, the petition should be [*4] denied on the ground that the publication of the notice of hearing was not properly made for such an action. However, if it is considered as a petition for correction of entries in the civil registry, then he withdraws his objection (p. 23, rec.).

On November 2, 1973, after due hearing, the lower court issued an order directing the local civil registrar of Arayat, Pampanga, to make the necessary correction of entries in the record of birth of respondent-petitioner Dominador P. Dizon (p. 20, rec.).

On November 9, 1973, the State, through the Provincial Fiscal of Pampanga, filed a motion for reconsideration on the grounds that the lower court did not acquire jurisdiction over the petition, and that the errors sought to be corrected are substantial and therefore not in the contemplation of Article 12 of the Civil Code, in relation to Rule 108 of the Rules of Court (p. 25, rec.).

On December 11, 1973, respondent Judge issued an order denying the motion for reconsideration filed by the provincial fiscal of Pampanga (p. 28, rec.).

Hence, this petition for review on certiorari by the State.

The petition should be granted.

In a long line of decisions, starting from the 1954 case of *Ty Kong vs. Republic* (94 Phil. 321) [*5} to the case of Rosales vs. Castillo Rosales (132 SCRA 132, September 28, 1984), this Court laid to rest the question as to whether or not substantial corrections and/or alterations can be made in the civil registry pursuant to Rule 108 of the Rules of Court in relation to Article 412 o the Civil Code.

It is a settled doctrine that under the summary procedure contemplated in Article 412 of the Civil Code, as implemented by Rule 10 of the Rules of Court, entries which can be corrected ". . . refer to those mistakes that are clerical in nature or changes that are harmless and innocuous, such as the correction of a misspelled name or occupation of the parents (*Ansaldo vs. Republic*, 102 Phil. 1046), or those that are visible to the eyes or obvious to the understanding, or 'errors made by a clerk or transcriber, a mistake in copying or writing'" (Wong vs. Republic, 115 SCRA 500, July 30, 1982).

In the instant case, there is no doubt tat the alteration sought by respondent Dominador P. Dizon is not legally possible under Rule 108 of the Rules of Court in relation to Article 412 of the Civil Code, sine it is substantial and controversial in nature.

But even [*6] granting that the petition is one for change of name under Rule 103 of the Rules of Court, still the alteration sought cannot be granted because publication as required by law was not properly made. Section 3 of Rule 103 provides that the court shall direct that its order fixing the date and place for the hearing of the petition be published before the hearing at least once a week for three (3) consecutive weeks in a newspaper of general circulation published in the province. Section 3 further provides that "the date set for hearing shall not be within thirty (30) days prior to an election nor within four (4) months after the last publication of the notice.

The Provincial Fiscal as well as all the heirs of the late Policarpio Dizon should be notified.

Moreover, in a petition for change of name, the Solicitor General must be notified by service of a copy of the petition which in the instant case was not done.

A change in the entry from "Domingo Patawaran" to "Dominador P. Dizon", and the alteration of the word "Unknown" after the column "Name of Father" to "Policarpio Dizon", do not only partake of the nature of a change of name, but also principally involve the issue of paternity [*7] and filiation.

Respondent Dominador P. Dizon, in his answer, admits that he was born on September 15, 1908 as an illegitimate son of the late Policarpio Dizon, married, of Bacolor, Pampanga, and the late Anselma Patawaran, single, of Arayat, Pampanga (p. 43, rec.). From this fact, it is obvious that his purpose in this proceeding he filed on September 7, 1973 - after about 65 years - is an audacious indirect attempt to establish his filiation with the late Policarpio Dizon through the simple expedient of changing the entries in his record of birth in the civil registry and his right to inherit. This is plainly not possible.

WHEREFORE, THE ORDER OF THE TRIAL COURT DATED NOVEMBER 2, 1973 IS HEREBY SET ASIDE AND THE PETITION DISMISSED, WITH COSTS AGAINST THE RESPONDENT DOMINADOR P. DIZON.

SO ORDERED.

Conception, Jr. (Actg. Chairman), Escolin, Cuevas and Alampay, JJ., concur.

Abad Santos, J., is on leave.

APPENDIX P

[Excepts from: *V.D.A. DeCastro v. Republic*,
Vol. 134 Supreme Court Reports Ann., 14 (1985)]

IN RE: PETITION FOR CORRECTION OF NAME
IN THE CIVIL REGISTRY OF MANILA;
SATURNINA VDA. DE CASTRO, petitioner-appellee,
vs. REPUBLIC OF THE PHILIPPINES, oppositor-appellant.

No. L-28520

Philippine Supreme Court, FIRST DIVISION

1985 Philippine S. Ct. LEXIS 3230

January 17, 1985

RELOVA, J.:

Direct appeal on points of law from a decision of the then Court of First Instance of Manila in Civil Case No. 70128, the dispositive portion of which is as follows;

"Considering all the foregoing, the Court finds the petition to be meritorious and grants the same. The Court declares that Ramon V. Castro, Jr., Ramon George Castro, Jr. and George F. Castro are one and the same person. The Civil Registrary of the City of Manila is ordered to make the correction in the records of the Civil Registry changing the name George F. Castro as appearing therein [*3] to that of Ramon V. Castro in the original of the certificate of birth, certified photostatic copy of which is now marked as Exhibit B." (p. 21, Record on Appeal)

The foregoing judgment was entered upon petition of Saturnina V. Vda. de Castro, file din the court aforesaid, praying that an order be issued "declaring that Ramon V.

Castro, George F. Castro and Ramon George Castro, Jr., to be the names of one and the same person, namely that of Ramon V. Castro and directing the Civil Registrar of the City of Manila to make the necessary correction in the records of the Civil Registry changing the name of George F. Castro to Ramon V. Castro." (p. 3, Record on Appeal)

Petitioner Saturnina V. Vda. de Castro in her petition alleged that her son Ramon V. Castro was born on August 31, 1946 at St. Luke's Hospital; that said Ramon V. Castro is also known as Ramon George Castro, Jr. in the baptismal certificate and George F. Castro in the birth certificate; that Ramon V. Castro is her child's rue and lawful name since childhood affixing said name in all transactions both in private and official documents; and that confusion arose when in choosing the name to be given to Ramon V. Castro upon his [*4] birth three names were proposed, namely: Ramon V. Castro, Ramon George Castro, Jr. and George F. Castro, the third name being erroneously recorded in the Civil Registry of Manila.

The court caused copies of the petition to be served on the Solicitor General and the Civil Registrar of Manila. The Republic of the Philippines, through the Solicitor General, opposed the petition claiming that "correction of entries in the civil registry contemplated under Article 412 of the Civil Code refers to clerical mistakes (Ty Kong Tin vs. Republic, L-5609, February 5, 1954). A clerical mistake is one which is visible to the eyes or obvious to the understanding; and error made by a clerk or a clerk or a transcriber; a mistake in copying or writing (Black vs. Republic, L-10869, November 28, 1958); Beduya vs. Republic, No. L-17639, May 29, 1964). Errors in birth certificates which are not clerical in nature cannot be corrected by means of a petition for correction (Lui Lin vs. Republic, No. L18213, December 24, 1963)." (p. 10, Record on Appeal)

The court a quo declared that upon proof of mistake it did have the power to order the change sought, and did so. Wherefore, the state appealed.

The decision [*5] must be reversed. It has been the consistent ruling of this Court since the *Ty Kong Tin vs. Republic*, 94 Phil. 321, "that substantial alterations, such as those affecting the status and citizenship of a person in the Civil Registry Records, can not be ordered by the court unless first threshed out in an 'appropriate action wherein all parties who may be affected by the entries are notified or represented' (see Rule 108 of the Revised Rules of Court), and that the summary proceedings under Article 412 of the Civil Code only justify an order to correct innocuous or clerical errors, such as misspellings and the like, errors that are visible to the eyes or obvious to the understanding (Baybayan vs. Republic of the Philippines, 16 SCRA 403)."

In Lui Lin vs. Nuno, 9 SCRA 707, this Court said:

"Article 412 of the New Civil Code contemplates mere corrections of mistakes that are clerical in nature, like misspelled names or occupations of the parents, etc., but not those which may effect the civil status, or the nationality or citizenship of the persons involved, for in such cases it is necessary to file the proper action wherein not only the State but also all the [*6] parties concerned should be made parties defendants.

"In the case at bar, where it is admitted that the name placed in the certificates of birth is not the name of a different person but the alias name of the petitioner himself and the name of the child was her real name, so that it cannot be contended that a mistake has been committed in giving the information to the local civil registry, while the changes sought for may affect the status of the petitioner or the paternity and filiation of his children, it is held that the lower

court erred in granting the petition under Article 412 of the New Civil Code."

Indeed, the mistake in the case at bar is not the mistake or error contemplated under Article 412 of the New Civil Code which justifies the correction of the birth certificate. Article 412 allows correction only of clerical mistakes, not those substantial changes which may affect the identity (a man is identified by his name), personality, civil status or nationality of the persons involved. Thus, errors in birth certificate which are not clerical in nature, as in this case before Us, cannot be corrected by means of a petition for correction.

ACCORDINGLY, the decision appeal [*7] from is REVERSED. Costs against petitioner-appellee.

SO ORDERED.

APPENDIX Q

(Article 15, Civil Code of the Philippines)

Art. 15. Laws relating to family rights and duties or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.

APPENDIX R

(Article 71, Civil Code of the Philippines)

Art. 71. All marriages performed outside the Philippines in accordance with the laws in force in the country where they were performed, and valid there as such, shall also be valid in this country, except bigamous, polygamous, or incestuous marriages as determined by Philippine law.

APPENDIX S

[Excepts from: *Yap v. Court of Appeals*,
Philippine S. Ct., October 28, 1986]

SHIRLEY YAP, in her own behalf and in her capacity as Administratrix of the estate of MANING YAP, JAIME YAP, and TALINA BIANONG VDA. DE YAP, petitioners, vs. COURT OF APPEALS, NANCY J. YAP, MANING YAP, JR., JULIA YAP, JASMIN YAP, and SAMUEL YAP, respondents.

GUITIERREZ, JR., J.:

This is a petition to review the Court of Appeals which set aside the earlier decision of the then Court of First Instance of Lanao del Sur in Special Proceeding No. 1334 (R-61), declaring the petitioners as the legal heirs of the late Maning Yap entitled to inherit his estate and dismissing the opposition filed by the private respondents. The dispositive portion of the decision on appeal reads:

"WHEREFORE, the decision appealed from is hereby set aside and, after a complete and correct inventory is returned by the administratrix, the entire estate of the deceased Maning Yap shall be divided into two equal parts, one-half (1/2) corresponding to the petitioner Talina Bianong and her children Shirley Yap and Jaime Yap and the other half corresponding to the oppositors Nancy J. Yap and her children Maning Yap, Jr., Julia Yap, Jasmin Yap and Samuel Yap, without pronouncement as to costs."

Maning Yap, during his lifetime married twice; first, to Talina Bianong in 1939 and second, to Nancy [*2] Yap on December 11, 1948.

Maning Yap and Talina Bianong were married at Bara-as Plantation, Malabang, Lanao del Sur, in accordance with the

Muslim rites and practices prescribed b the Islam religion professed by both of them. Immediately, after the marriage, the couple lived in the house of the parents of Maning Yap at the poblacion of Malabang, Lanao del Sur. Out of the marriage, four children were born; two of them died in infancy during the Japanese occupation, while the two others are petitioners Shirley Yap and Jaime Yap.

While the first marriage was still subsisting, Maning Yap married Nancy J. Yap on December 11, 1948 in a civil ceremony performed by District Judge Juan Sarenas of the Court of First Instance of Cotabato. Nancy Yap entered into the marriage in the belief that Maning Yap was not a married man. They had four children namely respondents Maning Yap, Jr., Julia Yap, Jasmin Yap and Samuel Yap. On February 21, 1964, Maning Yap died in Piagapo, Lanao del Sur, in the crash of an airplane of the Philippine Air Lines. At the time of his death, he, therefore, had two families living separately about 80 kilometers apart.

On March 3, 1964, Talina Bianong Vda. de Yap filed [*3] Special Proceeding No. 1334 (Intestate Estate of Maning Yap) before the Court of First Instance of Lanao del Sur, seeking the issuance of letters of administration for the estate of Maning Yap. Among other things, the petition alleged that maning Yap left personal and real properties all located at Malabang, Lanao del Sur, with an approximate value of P100,000.00.

The petition was opposed by Nancy J. Yap and her minor children on the ground that she is the legitimate widow of Maning Yap and that Maning Yap, Jr., Julia Yap, Jasmin Yap and Samuel Yap, all minors, are their legitimate children.

Talina Bianong was initially appointed special administratrix of the intestate estate of Maning Yap. However, after a formal hearing and on recommendation of Talina, the

lower court appointed Shirley Yap as regular administratrix of the intestate estate of Maning Yap.

Various claims filed by the creditors against the intestate estate of Maning Yap were duly approved by the court and paid by the administratrix. Since there still existed a residue of the intestate estate consisting of real and personal properties and collectible debts after payments to creditors, the court set the case for hearing [*4] to arrive at a declaration of heirship for the purpose of liquidating the conjugal partnership of the late Maning Yap and his surviving spouse and to determine the heirs entitled to inherit his intestate estate.

After trial, the lower court rendered decision declaring Talina Bianong and her children as the legal heirs of Maning Yap. The dispositive portion of the decision reads:

"IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered:

"(a) Declaring Talina Bianong, Shirley Yap and Jaime Yap, the legal heirs of the late Maning Yap and entitled to inherit or succeed to his intestate estate with Talina Bianong, as his surviving spouse, and Shirley Yap and Jaime Yap, as his surviving legitimate children;

"(b) Adjudicating to Talina Bianong one-third (1/3) of the whole intestate estate of the late Maning Yap, as her share, pursuant to Art. 996 of the Ne Civil Code; to Shirley Yap, the other one-third (1/3) as her share and to Jaime Yap the remaining one-third (1/3), also as his share, pursuant to Art. 980 in conjunction with Art. 996 of the new Civil Code.

"The opposition and claim of the opposition is hereby dismissed without costs."

Upon appeal by Nancy Yap and her children, [*5] the appellate court reversed and set aside the decision. As stated

earlier, the court of Appeals ruled that the estate of Maning Yap should be equally divided into two equal parts: one-half (1/2) to Talina Bianong and her children and the other half (1/2) to Nancy Yap and her children.

The appellate court applied the ruling in *Lao and Lao v. Dee Tim*, (45 Phil. 739). The facts in the cited case are similar to the case at bar in that Yap Siong in his lifetime contracted two marriages; first to Dee Tim on September 14, 1893 in China with whom he had three children and second to Maria Lao on June 24, 1903 with whom he had one child. Moreover, Maria Lao entered into the marriage believing that Yap Siong wa snot then a married man. Yap Siong died on September 1922 leaving properties which were claimed by the two families. In resolving the issue on how the properties of Yap Siong should be divided, this Court applied the Leyes de Partidas (Law 1; Title 13, Partida 4), to wit:

xxx xxx xxx [sic]

". . . [W]here two women innocently and in good faith are legally united in holy matrimony to the same man, their children and each family will be entitled to one-half of the [*6] estate of the husband upon distribution of his estate. That provision of the Leyes de Partidas is a very humane and wife law. It justly protects those who innocently have entered into the solemn relation of marriage and their descendants. The good faith of all the parties will be presumed until the contrary is positively proved. (Article 69, Civil Code; Las Leyes de Matrimonio, section 96; *Gaines v. Hennen*, 65 U.S., 553.)

"A woman who is deceived by a man who represents himself as single and who married him, she and her children born while the deception lasted, under the Spanish law, are entitled to all the rights of a legitimate wife and children. The common law allowing none of the incidents of a true marriage to follow another marriage entered into during the continuance of a first, was early found to work a great injustice upon the

innocent parties to the second marriage, and specially upon the offspring of such second marriage. . . ."

The petitioners now contend that Maning Yap died in 1964 when the New Civil Code had already superseded the old Spanish Civil Code. They state that pursuant to Article 2263 of the New Civil Code, the distribution of the [*7] estate of Maning Yap should be in accordance with the new codal provisions and not the Leyes Partidas, which is an old law no longer applicable.

We agree.

Article 2263, a transitional provision in the New Civil Code which took effect on August 30, 1950 states:

"Rights to the inheritance of a person who died, with or without a will, before the effectivity of this Code, shall be governed by the Civil Code of 1889, by other previous laws, and by the Rules of Court. The inheritance of those who, with or without a will, die after the beginning of the effectivity of this Code, shall be adjudicated and distributed in accordance with this new body of laws and by the Rules of Court; but the testamentary provisions shall be carried out insofar as they may be permitted by this Code. Therefore, legittimes, betterments, legacies and bequests shall be respected; however, their amount shall be reduced if in no other manner can every compulsory heir be given his full share according to this Code. (Rule 12a)"

The Report of the Code Commission explains the rule, to wit:

"The decisive fact which gives origin to the right of the heirs, devisees and legatees is the death of the decedent. This is the [*8][basis of the foregoing rule. NO heir, devisee or legatee has any vested right until the moment of such death (Civil Code, Padilla, Volume VII, 1975, p.712)."

We have accordingly ruled that the rights to the inheritance of a person who died before the effectivity of the Ne Civil Code shall be governed by the Civil Code of 1889, by other previous laws and by the Rules of Court (see *Vidaurrazaga v. Court of Appeals*, 91 Phil. 492; *Canales v. Arrogante*, 91 Phil. 9; and *Morales, et al. v. Yanez*, 98 Phil. 677), while the rights to the inheritance of a person who died after the effectivity of the New Civil Code shall be governed by the New Civil Code (Del Prado v. Santos, 18 SCRA 68).

There is no dispute that the marriage of Talina Bianong to Maning Yap was valid and that the second marriage contracted by the latter with Nancy Yap was illegal and void pursuant to Act 3613 of the Philippine Legislature, the marriage Law which was in force when the two marriages were celebrated to wit:

"SEC. 29. Illegal Marriages. Any marriage subsequently contracted by any person during the lifetime of the first spouse [*9] of such person with any person other than such first spouse shall be illegal and void from its performance, unless;

"(a) The first marriage was annulled or dissolved;

"(b) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or the absentee being generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, the marriage so contracted being valid in either case until declared null and void by a competent court."

Bearing this in mind, how must the estate of Maning Yap be distributed?

The records show that the real and personal properties under administration in the intestate estate proceedings of Maning Yap were acquired by Talina Bianong and the

deceased Maning Yap during their marriage. Hence, these properties, in the absence of any evidence to the contrary are considered conjugal properties of Talina Bianong and Maning Yap (Article 142, New Civil Code). Considering that there was no liquidation of the conjugal partnership of gains during the lifetime of Maning Yap, such liquidation must be carried [*10] out in the intestate proceedings of Maning Yap, the deceased spouse as expressly provided in Section 2, Rule 73, Revised Rules of Court (Lapuz v. Eufemio, 43 BCRA 177).

Article 142 of the Ne Civil Code provides:

"By means of the conjugal partnership of gains the husband and wife place in a common fund the fruits of their separate property and the income from their work or industry, and divide equally, upon the dissolution of the marriage or of the partnership, the net gains or benefits obtained indiscriminately by either spouse during the marriage."

and Article 185 thereof states:

"The net remainder of the conjugal partnership of gains shall be divided equally between the husband and the wife or their respective heirs, unless a different basis of division was agreed upon in the marriage settlements."

Pursuant to these provisions, the net remainder of the conjugal partnership of gains after money claims filed by creditors against the intestate estate of Maning Yap approved by the lower court have been paid by the administratrix should be equally divided between Maning Yap and Talina Bianong as their shares. The one-half shares of Maning ap would then comprise his intestate estate [*11] to be distributed among his heirs. (See also Vda. de Delizo v. Delizo, 69 SCRA 216).

Under the law of succession in the New Civil Code, Maning Yap's legal heirs are Talina Bianon, her children Shirley Yap and Jaime Yap and the children of Nancy Yap by

Maning Yap namely: Maning Yap, Jr., Julia Yap, Jasmin Yap and Samuel Yap. Talina Bianong, the first wife had not lost or relinquished her status as putative heir of her husband. She is entitled to share in Maning Yap's estate upon his death (Gomez v. Lipana, 33 SCRA 615). On the other hand, Nancy Yap, the second wife cannot inherit from Maning Yap because their marriage was void ab initio. (Art. 83, New Civil Code, People v. Mendoza, 95 Phil. 845). However, Nancy Yap's children by Maning Yap have the status of natural children by legal fiction and are considered compulsory heirs of the late Maning Yap. (Articles 89 and 887, New Civil Code).

Considering the foregoing, the estate of Maning Yap which is one-half (1/2) pro indiviso of the net remainder of the conjugal partnership of gains of the first marriage (Articles 142 and 185 New Civil Code), the other half being the share of Talina Bianong, should be distributed [*12] as follows,

a. To the legitimate children, Shirley Yap and Jaime Yap - one-half (1/2) of the resulting net estate to be divided equally among them pursuant to Article 888 of the New Civil Code;

b. To the legitimate widow Talina Bianong - one-fourth (1/4) of the net estate taken from the free portion or disposable half of the estate pursuant to Article 999 in relation to Article 897 of the New Civil Code; and

c. To the natural children by legal fiction - Maning Yap, Jr., Julia Yap, Jasmin Yap and Samuel Yap - the remaining one-fourth (1/4) of the net estate to be shared equally between them pursuant to the first and third paragraphs of Article 895 in relation to Article 983 of the New Civil Code.

WHEREFORE, the instant PETITION is GRANTED. The questioned decision of the Court of Appeals is hereby REVERSED and SET ASIDE. The widow, Talina Bianong shall receive one half (1/2) of the whole intestate estate as her share in the net remainder of the conjugal partnership of

game. The other half, which is the net estate of the late Maning Yap, is distributed and adjudicated as stated above.

SO ORDERED.

Feria (Chairman), Fernan Alampay and Paras, JJ., concur.